IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2826/2004 WITH 2827/2004

Shantilal Maganlal Soni. ...Petitioner.
Vs.
Ramesh Siohanlal Jain & ors. ...Respondents.

Mr. G.V. Pandya for the Petitioner.
Mr. S.M. Jain for the Respondent No.1.

CORAM : V.M.KANADE,J.
DATED : 4/5/2005

P.C.:

1. Heard learned counsel appearing for the applicant and the learned counsel for the respondents.

2. The applicant is challenging the order of issuance of process by the Metropolitan Magistrate, 14th Court, Girgaon, Mumbai on a complaint filed by the respondent No.1 under Section 138 of the Negotiable Instruments Act. It is submitted by the learned counsel appearing on behalf of the applicant that when the cheques in question were deposited by the complainant in his bank, they were returned with remark that the account was frozen by the applicant's bank. It is submitted by the learned counsel appearing on behalf of the applicant that the bank has improperly rejected the cheques and

therefore, the applicant cannot be made responsible for the dishonour of the cheques. He has also invited my attention to the letter which is written by the applicant in which it is stated that his account has been frozen by the bank. It is therefore, submitted that the applicant is not liable for punishment under the provisions of Section 138 of the Negotiable Instruments Act. The learned counsel appearing ion behalf of the respondent has invited my attention to the reply given by the bank to the applicant after he had sent the letter seeking explanation from the bank why his account was frozen. To this letter, the bank has stated that the applicant was having cash credit account and the balance in the cash credit account as on 9.5.2002 exceeded the sanctioned credit limit of the account and therefore, the cheques issued by the accused in the month of May,2002 were returned by the bank.

3. It is not possible to accept the submissions made on behalf of the applicant. All these questions which are raised in this petition by the applicant are concerning the factual aspect of the case which can be decided only at the time of trial. It is not possible to interfere with the order of

issuance of process while exercising the jurisdiction and inherent powers vested in this court under section 482 of the Cr.P.C. Both the applications are therefore, rejected. It is however, clarified that all these questions which are raised by the applicant in these petitions shall be considered by the Trial Court after evidence is adduced by the parties on merits and in accordance with law. Hearing of the trial is expedited.

(V.M.KANADE, J.)